

2019 Probate Judges Summer Conference



- **PROBATE AND DEATH**



Right of disposition of Dead Bodies.

Section 34-13-11

- (c) **Notwithstanding subsections (a) and (b):**
 - The judge of probate of the county of residence of the decedent may award the right of disposition to the person the judge of probate determines to be **the most fit and appropriate** to manage the right of disposition, and **may make decisions regarding the remains of the decedent if the persons possessing the right of disposition do not agree.**

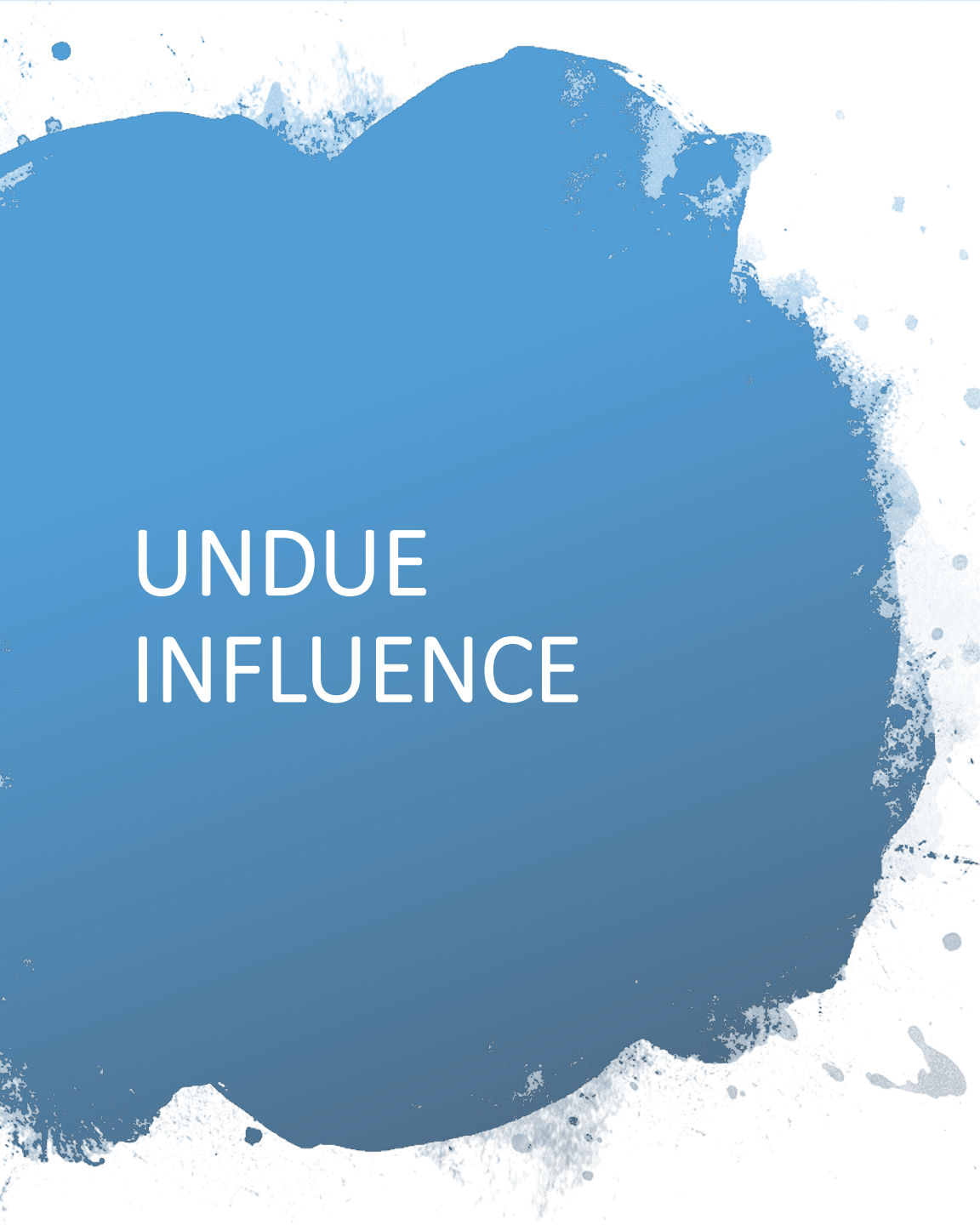
Right of disposition of Dead Bodies.

Section 34-13-11

- (c) If two or more persons who possess an equal right of disposition are not able by majority vote to agree upon the disposition of the remains of the decedent, **any of those persons or the funeral establishment with custody of the remains** may file a petition asking the judge of probate to make a determination in the matter.
- **In making such a determination, the judge of probate shall consider all of the following:**

PROBATE LAW



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UNDUE INFLUENCE

CASE LAW

- 1. McGee v. McGee***
- 2. Brown v. Brown**

McGee v. McGee
91 So.3d 659(Ala. 2012)

(Case includes examples of circumstantial evidence of undue activity in the procurement or execution of a will)

- **Facts:** Testator's son brought action against executor (his brother) in will contest for fraud and conversion and undue influence.
- Jury trial on **undue influence**.
- Denial of executor's request for payment of costs and fees.

McGee v. McGee

- **Legal Point:**

1. **To prove undue influence:** it still must be shown that there was **active interference in procuring the execution of the will**; this activity must be in procuring the execution of the will and more than activity and interest referable to a compliance with or obedience to the voluntary and untrammelled directions of the testator.
2. **Undue activity may be proved by circumstantial evidence;** but, a court does **not look at individual facts or evidence in isolation** in determining whether the evidence supports this element of undue influence.

McGee v. McGee

EXAMPLES OF CIRCUMSTANTIAL EVIDENCE:

- ✓ The initiation of the proceedings for the preparation of the will or participation in such preparation;
- ✓ Employing the draftsman;
- ✓ Selecting the witnesses;
- ✓ Excluding persons from the testatrix at or about the time of the execution of the will; or
- ✓ Concealing the making of the will after it was made.

Brown v. Brown

90 So.3d 716 (Ala. Civ. App. 2011)

- **Facts:**
- R.B., the decedent, deeded two pieces of real estate to his son, A.J., while he was still alive.
- A.J. had been appointed as a temporary conservator and guardian, but that appointment expired before the conveyance.
- Emily, R.B.'s wife, sued to set aside the conveyances.

Brown v. Brown

- **Holding:** The Court of Civil Appeals affirmed the trial court's **setting aside of the deeds as a product of undue influence** because of the dominance and isolation exercised by A.J. upon R.B.
- **Reasoning:** A plaintiff seeking to cancel an inter vivos transfer from a parent to child meets his initial burden if he shows that **the child has become the dominant party in his relationship with the parent.**

R.B. had a stroke and was unable to process information or handle finances on his own. A.J. did these things for him, as well as arranged for an attorney to prepare the deeds to transfer and prevented Emily from seeing R.B. at times.

Brown v. Brown

- **Legal Points:**

- 1. Undue Influence: “The relation of parent and child is per se a confidential one with the law presuming that the parent is the dominant spirit. In such instances, the law further presumes that any transaction between the parent and child is free from undue influence.
- If, however, it is made to appear to the reasonable satisfaction of the court that the child, and not the parent, is the dominant spirit, then the presumption is reversed and the **BURDEN OF PROOF** shifts to the child who has benefitted from the transaction to show that the transaction was fair, just, and equitable in every respect and that it was not the result of undue influence. [*Chandler v. Chandler*, 514 So.2d 1307 \(Ala.1987\);](#)
[*Dillard v. Hovater*, 254 Ala. 616, 49 So.2d 151 \(1950\).](#)

Brown v. Brown

Legal Points

- 2. “Undue influence with respect to gifts and conveyances **INTER VIVOS** may exist without either coercion or fraud.
- It may result entirely from the confidential relation, without activity in the direction of either coercion or fraud on the part of the beneficiary occupying the position of dominant influence.
- It is upon the person occupying the position of dominant **influence not only to abstain from deceit and duress but to affirmatively guard the interests of the weaker party so that their dealing may be upon a plane of equality and at arm's length.** [*Chandler v. Chandler, supra.*](#)

Brown v. Brown

Legal Points

- 3. “A.J. has cited for the court's consideration the recently decided case of [Murphy v. Motherway, \[66 So.3d 770 \(Ala.Civ.App.2010\)\]](#), for the proposition that there must be interference by the allegedly dominant party and such interference must go beyond mere compliance with the voluntary directions of the weaker party.
- The [Murphy](#) case, however deals primarily with a **will contest**, and it is well established that a **different standard applies in a will contest than in an inter vivos transfer.** [Chandler v. Chandler, supra](#)

Brown v. Brown

- Legal Points:
- 4. “In determining whether [R.B.] was the dominant spirit in the transaction between him and A.J. on July 21, 2006, **the state of [R.B.'s] physical and mental health becomes a primary consideration.**

Brown v. Brown

- In order to establish a **prima facie case of undue influence with regard to a testamentary transfer of property**, the party challenging the transfer must introduce substantial evidence establishing:
- (1) that a confidential relationship existed between a favored beneficiary and the testator;
- (2) that the influence of or for the beneficiary was dominant and controlling in that relationship; and
- (3) that there was undue activity on the part of the dominant party in procuring the execution of the will.

FEES

- 1. Wehle v. Bradley
- 2. Kiker v. Probate
Court of Mobile County
- 3. **Archer ex rel. Archer
v. Estate of Archer**

Wehle v. Bradley,
49 So.3d 1203 (Ala. 2010)

- (Payment of compensation to a personal representative without prior court approval must be *expressly* authorized by the will)
- **Issue:** Did provisions of deceased's will which granted broad discretion to a personal representative in distributing property under the will satisfy the statutory requirement that there be an **express provision authorizing the payment of such fees without court approval?**

Wehle v. Bradley,

- Section 43-2-844(7), Ala. Code 1975, requires that payment of compensation to a personal representative without prior court approval be “ ***expressly authorized by the will.***”
- “**Express**” means “[c]learly and unmistakably communicated; directly stated.” *Black's Law Dictionary* 620 (8th ed.2004).
- Clearly, authorization that is only allegedly inferred from a “fair reading” of a will is not “expressly” stated in that will.

Kiker v. Probate Court of Mobile County,
67 So.3d 865 (Ala. 2010)

- The court held that the record failed to
indication as to whether the probate court
considered the criteria set forth for determining
the reasonableness of an attorney fee as
detailed in Pharmacia Corp. v. McGowan , 915
So.2d 549, (Ala.2004)

Kiker

- This Court has set forth **12 criteria a court might consider when determining the reasonableness of an attorney fee:**
 - (1) Nature and value of the subject matter of the employment;
 - (2) Learning, skill, and labor requisite to its proper discharge;
 - (3) Time consumed;
 - (4) Professional experience and reputation of the attorney;
 - (5) Weight of his responsibilities;
 - (6) Measure of success achieved;

Kiker

- (7) Reasonable expenses incurred;
- (8) Whether a fee is fixed or contingent;
- (9) Nature and length of a professional relationship;
- (10) Fee customarily charged in the locality for similar legal services;
- (11) Likelihood that a particular employment may preclude other employment; and
- (12) Time limitations imposed by the client or by the circumstances.”

Archer ex rel. Archer v. Estate of Archer,
45So.3d 1259 (Ala. 2010)

- **(Reasonable attorney fees and costs incurred by heir in settled actions constituted “fees and charges of administration for beneficiary's estate)**
- **Background:** Minor heir of deceased beneficiary of will, by and through her mother, brought actions against personal representative of testator's estate, alleging that personal representative was mishandling and misappropriating assets of testator's estate, thereby adversely affecting the value of beneficiary's estate.

Archer ex rel. Archer v. Estate of Archer,

Holding:

- The payment of attorney fees falls under Section 43-2-371(2) as a part of [t]he fees and charges of administration” of the estate.
- **Therefore, the payment of attorney fees has priority over the payment of all other debts of the Archer estate other than the funeral expenses.**
- Under the plain language of Section 43-2-371, **the award of attorney fees and costs in the present cases should hold second priority as “fees and charges of administration.”**

Alabama Probate Statutes

- **Revocation By
Divorce Or
Annulment Of Certain
Documents**

Ala. Code 30-4-17.

- **Probate Exemptions**



Revocation By Divorce Or Annulment Of Certain Documents

Ala. Code 30-4-17

Except as provided by:

- **The express terms** of a governing instrument;
- **A court order**; or
- **A pre or post nuptial agreement**

Certain documents are automatically revoked by divorce or annulment

Revocation By Divorce Or Annulment Of Certain Documents

Ala. Code 30-4-17

- Examples of documents automatically revoked:
 - **Revocable inter-vivos trusts;**
 - **Life insurance;**
 - **Retirement plan beneficiary designations;**
 - **Transfer-on-death accounts; and**
 - **Other revocable dispositions to the former spouse or relatives of the former spouse.**

Revocation By Divorce Or Annulment Of Certain Documents

Ala. Code 30-4-17

- **LIFE INSURANCE**

- Act does not apply to any insurance policy for which the former spouse is named beneficiary if the former spouse:
 - is listed as owner of the policy; or
 - makes premium payments on the policy following the divorce or annulment.

Revocation By Divorce Or Annulment Of Certain Documents

- The interests of the former spouses in property that they held at the time of the divorce or annulment as **joint tenants with the right of survivorship** are **severed**;
 - and their co-ownership interests become **tenancies in common**.
- Remarriage of the parties revives what these provisions revoked.
- **EFFECTIVE DATE: September 1, 2015.**

Probate Exemptions

Amends the following sections to increase permissible exemptions:

- Sections 6-10-2, 6-10-6, 6-10-11
- Sections 43-8-110, 43-8-111, 43-8-113, and 43-8-115

Exemptions From Debt Collections

- **Sections 6-10-2:** Increases permissible exemptions available to a surviving spouse/children to **\$15,000 for homestead** from \$5,000.
- **Sections 6-10-6:** Increases permissible exemptions available to a surviving spouse/children to **\$ 7,500 for personal property** from \$3,000.
- **Section 6-10-11:** Same increased exemption in **Bankruptcy**.

Exemptions in Estates

- **Sections 43-8-110:** Increases permissible exemptions available to a surviving spouse/ children to **\$15,000 for homestead** from \$6,000.
- **Section 43-8-111:** Increases permissible exemptions available to a surviving spouse/children to **\$ 7,500 for personal property** from \$3,500.
- **Section 43-8-113:** Increases permissible exemptions available to a surviving spouse/children to **\$ 15,000 for family allowance** from \$6,000.

Probate Exemptions

Requires the State Treasurer to adjust these exemptions to reflect the cumulative change in the Consumer Price Index, beginning on **July 1, 2017**, and the end of each three-year period thereafter.

- EFFECTIVE DATE: June 11, 2015.

Administration Of Estates

Wrongful Death

1. Ex Parte Rodgers

**2. Golden Gate Nat.
Senior Care, LLC v.
Roser**

Ex Parte Rodgers
141 So. 3rd 1038 (Ala. 2013)

- **Facts:** McElroy was appointed as administrator over White's estate, who was killed in a car wreck at age 20. White had no assets and no heirs, save for mother, and father was later determined to be an heir as well.
- McElroy hired an attorney to pursue the wrongful-death claim, which resulted in a total settlement of \$175K.
- McElroy petitioned the circuit court, and a fee of 9%, or \$15,750, was awarded to McElroy, coming out of the wrongful-death settlement.

Ex Parte Rodgers
141 So. 3rd 1038 (Ala. 2013)

Holding:

- The Alabama Supreme Court reversed the Court of Civil Appeals and held:
- **a personal representative is not entitled to compensation out of wrongful-death proceeds.**

Ex Parte Rodgers

Reasoning:

- A wrongful death action must be commenced by the personal representative, but the proceeds of the action do *not* become part of the estate.
- The personal representative must distribute the proceeds to those entitled under the statute of distribution.

Ex Parte Rodgers

Personal Representatives Are Entitled To Compensation Under § 43-2-848.

For ordinary services, this amount cannot exceed 2.5 % of all property under possession and control of the personal representative – the Court interpreted this to mean property of the estate.

For extraordinary services, the court may allow reasonable compensation for extraordinary services performed for the estate.

- Since the wrongful death claim is not part of the estate, the personal representative is not entitled to compensation from it for her services as personal representative.

Ex Parte Rodgers

- **Concurrence (Bolin) :** This result is correct as a matter of statutory interpretation, but inequitable to force the personal representative to act “as an agent of legislative appointment” **without compensation.**
- However, Ala. Code § 6–5–410 may be read as creating a **statutory trust**, which allows the trustee fair compensation for its management under the Restatement (Third) of Trusts and case-law from other states.

Golden Gate Nat. Senior Care, LLC v. Roser

94 So.3d 365 (Ala. 2012)

- **Reasoning:** **Bolin, J., concurring specially:** (DICTA)
Ala. Code § 6–5–410 provides that a **personal representative** may commence a wrongful death action.
- An **administrator *ad litem***, on the other hand, under Ala. Code § 43–2–250, may be appointed only when a proceeding is ongoing, the decedent’s estate must be represented, and there is no executor or administrator or the executor or administrator has an interest adverse to the estate.
-

Golden Gate Nat. Senior Care, LLC v. Roser

94 So.3d 365 (Ala. 2012)

- Reasoning: Bolin, J., concurring specially:
- In a wrongful death action, however, the estate is not involved, as the personal representative is not representing the estate during the wrongful death action. *See Ex Parte Taylor*, 93 So.3d 118 (Ala. 2012) (Murdock, J., concurring specially).

Golden Gate Nat. Senior Care, LLCv. Roser

- Thus, **only a personal representative, not an administrator ad litem, may commence a wrongful death action.**
- If the personal representative does not pursue the action when he should, “[t]he proper remedy would have been a motion to remove the personal representative for failing to carry out the duties of his office, so that a successor personal representative could be appointed.”

Common Law

Marriage

- **Melton v. Jenkins**
- **Harbin v. Estess**

Melton v. Jenkins

92 So.3d 105 (Ala. Civ. App. 2012)

Facts:

- Mary Melton died, and her daughter was appointed personal representative of the estate.
 - Thomas Jenkins filed a claim for exemptions, claiming to be Mary's common law spouse.
 - The probate court found that the two were common-law married.
-
- **Holding:** The Court of Civil Appeals reversed the probate court's decision because it found that Jenkins presented no credible evidence that Melton and Jenkins were recognized by the community as married.

Melton v. Jenkins

In Alabama, recognition of a **common-law marriage requires proof of the following elements:**

- **(1)** Capacity;
- **(2)** Present, mutual agreement to permanently enter the marriage relationship to the exclusion of all other relationships; and
- **(3)** Public recognition of the relationship as a marriage and public assumption of marital duties and cohabitation.”

“Courts of this state closely scrutinize claims of common law marriage and **REQUIRE CLEAR AND CONVINCING PROOF** thereof.”

Melton v. Jenkins

FINDINGS (Majority):

- ✓ The court found that the only evidence Jenkins presented of public recognition of the relationship were 2 letters – one was sent following Mary's death and the other when Mary was no longer "capable of conducting her own affairs" due to Alzheimer's.
- ✓ Jenkins claimed they had a joint bank account but produced no documentation of it;
- ✓ They owned no property together; and
- ✓ They never filed a joint tax return.

Melton v. Jenkins

- **FINDINGS (Majority):**
- “The **meager amount of evidence** that Jenkins introduced to prove that he and Mary had gained public recognition of their purported common-law marriage was **not sufficient to meet this heavy burden** because ‘[t]he facts adduced by [Jenkins] ... do not meet the **required standard of a persuasive pattern of unambivalent conduct, but rather are too few and isolated.**’”

Melton v. Jenkins

- **FINDINGS (Majority):**
- “See also Reese v. Holston, 67 So.3d 109, 113 (Ala. Civ. App. 2011)
 - (holding that two isolated documents were insufficient to show a pattern of conduct that the purported common-law marriage had gained public recognition).
 - The lack of jointly owned property and integrated finances also militate against a determination of the existence of a common-law marriage.”

Melton v. Jenkins

- **FINDINGS (Dissent):**

1. In this case, the Mobile Probate Court entered a **seven-page judgment** citing the elements of a common-law marriage and the clear-and-convincing-evidence standard and **explaining in detail its determination that a common law marriage existed.**
2. The probate court found that, from 2003 to 2007, documents prepared by six different disinterested persons, including Mary herself, indicated that she was married to Jenkins.
3. The probate court discounted Jenkins's testimony that he had lived with Mary since 1995, but it found the evidence to be undisputed that he was living with her at the time of her death and that he had been living with her for some period before her death.

Melton v. Jenkins

• **FINDINGS (Dissent):**

4. The probate court further found:

- Jenkins had cared for Mary during the last years of her life;
- Jenkins and Mary had paid household expenses from a joint bank account;
- Jenkins testified that he and Mary wore wedding bands for several years before Mary's death;
- Jean Love, Mary's friend, had observed Mary wearing a ring that could be considered a wedding ring.

Melton v. Jenkins

- **FINDINGS (Dissent):**

5. The probate court further found:

- Mary's death certificate and obituary, which Melissa did not attempt to correct, listed Jenkins as her spouse; and
- Jenkins had paid for Mary's funeral and burial expenses.

Melton v. Jenkins

• **FINDINGS (Dissent):**

6. Applying the law to the facts, the probate court concluded:
 - ✓ that Mary and Jenkins had had the capacity to marry from 2002–2003 to the time of Mary's death;
 - ✓ that they had agreed to enter into a marriage relationship between 2002–2003 and 2007;
 - ✓ that other persons in the public had recognized their marriage; and
 - ✓ that they had cohabited with one another and shared living expenses.

Harbin v. Estess,
267 So.3d 300 (Ala.2018)

- **Background:** Purported common-law wife petitioned for an omitted spouse's share of decedent's estate.
- After removal of the case and intervention of decedent's sons as defendants, the Circuit Court, determined that the nonclaim statute barred the claim.
- Purported wife appealed.

Harbin v. Estess,
267 So.3d 300 (Ala.2018)

- **Holdings:** The Supreme Court, Wise, J., held that:
- 1 treating personal representative's motion to dismiss as a motion for summary judgment was warranted;
- 2 purported common-law wife's claim was a claim of title for purposes of the nonclaim statute rather than a claim against the estate; and
- 3 genuine issue of material fact as to whether a common-law marriage existed precluded summary judgment.
- **Reversed and remanded.**

Harbin v. Estess₂

- Holding:
- Nonclaim statute's time limits on claims against an estate **do not** apply to a **claim for an omitted spouse's share**.
- Ala. Code §§ 43-2-350(b), 43-8-90.

Harbin v. Estess,

- REASONING:

- Claim by purported common-law wife for an omitted spouse's share of decedent's estate **was a claim of title** for purposes of the nonclaim statute
- Rather than a claim against the estate, and
- Thus, the time limits specified in nonclaim statute did not apply to purported wife's claim.

Harbin v. Estess,

- A determination of whether she was decedent's common-law wife did not involve a relationship of debtor and creditor between her and the estate;
- A determination of whether a common-law marriage existed did not diminish the assets or affect the financial status of the estate; and
- A request for a determination that she was a common-law spouse, standing on its own, did not involve a claim for money.
 - [Ala. Code § 43-2-350\(b\).](#)

Harbin v. Estess,

- Recognition of a common-law marriage requires proof of the following elements:
 - (1) Capacity;
 - (2) Present, mutual agreement to permanently enter the marriage relationship to the exclusion of all other relationships; and
 - (3) **Public recognition** of the relationship as a marriage and **public assumption of marital duties and cohabitation**.

Harbin v. Estess,

- Whether the parties had the intent, or the mutual assent, to enter a common-law marriage relationship is a **question of fact.**

Harbin v. Estess,

- TRIAL COURTS

For trial courts ruling on **motions for a summary judgment** in civil cases to which a **clear-and-convincing-evidence standard of proof** applies,

- The judge must view the evidence presented through **the prism of the substantive evidentiary burden**;

Harbin v. Estess,

APPELLATE COURT

- Thus, the appellate court must also look through a prism to determine whether there was **substantial evidence before the trial court to support a factual finding,**
- Based upon the trial court's weighing of the evidence,
- That would **produce in the mind of the trial court a firm conviction as to each element of the claim and**
- **A high probability as to the correctness of the conclusion.**

Harbin v. Estess₂

- **Genuine issues of material fact** existed as to whether there was a common-law marriage.
- **Precluding summary judgment** in favor of personal representative in action brought by purported common-law wife for an omitted spouse's share of decedent's estate.

SMALL ESTATES



Section 43-2-691. Definitions.

- **(1) DEVISEES.** The persons who are entitled to the personal property of a decedent under the terms of a testamentary disposition.
- **(2) DISTRIBUTEES.** The persons who are entitled to the personal property of a decedent under the terms of a testamentary disposition or under the Alabama descent and distribution statutes.
- **(3) ESTATE.** All the personal property of a decedent **who owns no real property at the time of his or her death for which title does not pass by operation of law**.
- **(4) HEIRS.** The persons who are entitled to the personal property of a decedent under the Alabama descent and distribution statutes.

Section 43-2-692 (a).

Petition for summary distribution.

When surviving spouse or distributee entitled to personal property without administration.

The surviving spouse, if there is one, otherwise the distributees of an estate of **personal property only**, may :

- File a verified petition in the probate office in the county in which the decedent was domiciled at death for summary distribution of the estate
- Petition must:
 - ✓ 1. alleging the conditions provided in subsection (b).
 - ✓ 2. include a description of the estate of the decedent.
- No bond required.

Section 43-2-692 (b).

Petition for summary distribution;

The surviving spouse or distributee shall have a defeasible right to the personal property of the decedent **without awaiting the appointment of a personal representative or the probate of a will if all of the following conditions exist:**

- ✓ (1) The value of the entire estate does not exceed twenty-five thousand dollars (\$25,000).
- ❖ (This figure shall be adjusted annually for changes in the Consumer Price Index by the State Finance Director who shall notify each judge of probate of the newly adjusted figure.)

Petition for summary distribution;

- ✓ (2) The decedent died a resident of this state.
- ✓ (3) No petition for the appointment of a personal representative is pending or has been granted.
- ✓ (4) At least 30 days have elapsed since the notice was published.

Petition for summary distribution;

- ✓ (5) All funeral expenses of the decedent have been paid, or alternatively, that arrangements for the payment have been made.
- ✓ (6) If the decedent died intestate, the awards due to the surviving spouse and to the child or children have been determined by the judge of probate.
- ✓ (7) If the decedent died testate, the will has been filed.

Petition for summary distribution;

- (8) **Notice** of the filing of a petition for a summary distribution under this division shall be **published once** in a newspaper of general circulation in the county in which the decedent was domiciled,

[or if there is no newspaper of general circulation in the county, then notice thereof shall be posted at the county courthouse for one week.]

- (9) All **claims** against the decedent's estate have been **paid or arrangements** for the payment out of the estate of the decedent have been ...according to the **priority in the code:**

ORDER FOR PRIORITY FOR CLAIMS IN SUMMARY DISTRIBUTION

- a. First, for any **funeral expenses**.
- b. To the judge of probate for **fees and charges incurred in the proceedings for summary distribution**.
- c. Expenses incurred in **the decedent's last illness**.
- d. **Taxes**
- e. To each **secured creditor**.

Section 43-2-692.

ORDER FOR PRIORITY FOR CLAIMS IN SUMMARY DISTRIBUTION

- f. To each **unsecured lienholder**.
- g. To each **remaining general unsecured creditor** of the decedent.
- h. To each **surviving spouse, child, or other distributee** who is entitled to take under Alabama's descent and distribution laws, **or, alternatively, to each devisee entitled to take under any testamentary disposition of the decedent.**

Section 43-2-693.

Entry of order directing summary distribution.

When all of the applicable conditions
enumerated in subsection (b) of Section
43-2-692 occur:

**The judge of probate shall enter an
order directing a summary distribution of
the estate.**



Guardianship

Guardianship

ADULTS

Adult Guardianship Jurisdiction Act

Guardianship Visitation Rights

Temporary Guardian

MINORS

Mental Health Treatment for Minors



Forms

**Adult Guardianship
Jurisdiction Act**

§ 26-2B-210.

INFORMATION TO BE SUBMITTED TO COURT.

- (a) Except as otherwise provided in this section, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the respondent's present address or whereabouts, the places and addresses where the respondent has lived during the last five years.
- The pleading or affidavit **must state...**

Informational Affidavit

IN THE _____ COURT OF _____ COUNTY, ALABAMA

In the matter of:)

Case No.: _____

An (Alleged) Incapacitated Person)

[Respondent]

INFORMATIONAL AFFIDAVIT UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTIONAL ACT

[Note: Before completing this form, please read the
Instructions and comments on the last page.]

This affidavit is executed pursuant to Ala. Code § XX-
XX-210, et seq. (1975), otherwise known as the Alabama
Uniform Guardianship and Protective Proceedings
Jurisdictional Act; and

Now comes, _____, the undersigned
Petitioner, (whose current address is: _____),
and upon first being placed under oath, does thereby aver and
provide the following:

RESPONDENT INFORMATION -

Name of respondent: _____

Date of Birth: _____

Current Address or location: _____

Respondent has lived at the following address(es) during the
past five (5) years:

INFORMATION ABOUT OTHER PROCEEDINGS AND PARTIES:

1. Have you petitioned in any way in any other
proceeding concerning guardianship or conservatorship
for the respondent? Yes _____ No _____

(If your answer is "Yes", please provide the following
information. Please attach additional sheets if necessary
for more than one proceeding.)

Name of Court: _____

Case No. _____

Order Date: _____

Results or disposition: (describe ruling or attach a copy
of court order). _____

If order did issue, is the order or other ruling, still
applicable: Yes _____ No _____

2. Do you have knowledge of any proceeding which could
affect the current proceeding, including but not limited
to proceedings to establish, modify, terminate or
enforce a protective order? Yes _____ No _____

If answering "Yes", please provide the following
information. Please attach additional sheets if necessary
for more than one proceeding.

Informational Affidavit, continued

Name of Court: _____
Case No. _____
Type of Proceeding: _____
Status of the proceedings and orders issued, including
the next date set for hearing: _____

3. Do you know the name and address of any person or entity, not a party to this proceeding, who has physical custody of the respondent? Yes ____ No ____

If answering "Yes", please provide the following information:

Name(es): _____
Address: _____

Under what authority, if known, does this person or entity have the physical custody of the subject respondent? Please provide as much information as possible, including the name(s) and address(es) of other parties who may have this information.

4. Do you know the name and address of any person or entity, not a party to this proceeding, who holds an appointment or alternate appointment as legal agent, payee, power of attorney, or the like, on behalf of the said respondent?

Yes ____ No ____

If answering "Yes", please provide the following information:

Name: _____

Address: _____

Please list details of such, if known, and attach a copy of any document which you feel supports this information or which you feel should be provided in this proceeding for the Court to consider. _____

STATEMENT AS TO DISCLOSURE OF INFORMATION:

Do you feel, based on your knowledge and information, that the disclosure of the name and current address of the respondent would jeopardize the health, safety, or liberty of a party and/or the respondent?

Yes ____ No ____

If your answer is "Yes", please state the reasons for your opinion and the name of the party or parties, including the respondent if applicable, who may be placed in jeopardy. Please be as specific as possible in your answer.

Signed (date) _____
Affiant

STATE OF _____)
COUNTY OF _____)
_____)

I, the undersigned authority, a Notary Public in and for said County and State, do hereby certify that _____, whose name is signed to

Informational Affidavit, continued

the foregoing document as the Affiant, and who is known to me, acknowledged before me on this day that, being informed of the contents of this Affidavit, ____ executed the same voluntarily on the day the same bears date.

Sworn to and subscribed before me this ____ day of _____, 20 ____.

(Seal)

Notary Public
My Commission expires:

INSTRUCTIONS, ETC. (Please read before completing form)

- A. **PLEASE NOTE** that if the information required by subsection (a) of said Code Section (Items 1-4 in this form) is not furnished, upon motion of a party, or on the Court's own motion, the proceedings may be stayed until such information is furnished;
- B. **PLEASE NOTE FURTHER** that the above information shall be reviewed by the Court. In doing so, the Affiant may be requested and required to provide more details, clarifications or additional information, and further, may be required to be examined under oath by the Court. If appropriate, after Court review and if sufficient reason is provided above, the information contained herein, or parts thereof, may be placed under seal, or as the Court may direct, with disclosure only permitted under Court order.
- C. **PLEASE** attach any additional pages as needed to

complete the information being provided along with copies of any documents found necessary and appropriate for said purpose or to explain or confirm any statements being made herein.

§ 26-2B-302.

ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED
FROM ANOTHER STATE.

- (a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship.
- **THE PETITION MUST INCLUDE THE FOLLOWING:**
- **(1) a certified copy** of the other state's **provisional order of transfer.**
- **(2) an inventory** of the protected person's estate as of the date of the petition
- **(3) proof of the conservator's bond; and**
- **(4) final accounting**

General Information and Asset Summary Sheet

IN THE _____ COURT OF _____ COUNTY,
ALABAMA

_____)
In the matter of:)
)
)
_____)
An (Alleged) Incapacitated Person)

[Respondent])
_____)

General Information and Asset Summary Sheet Uniform Guardianship and Protective Proceedings Jurisdictional Act

This information sheet must be completed and filed with the Probate Court along with the Informational Affidavit (Form No....) and other appropriate pleading(s) requesting the establishment of a Guardianship and/or Conservatorship, or other protective proceeding where the respondent/ward is, or was previously, a resident of another state or foreign jurisdiction in which proceedings may have been established.

Respondent:

Name of respondent/ward: _____
Address: _____
Date of Birth: _____

General Information and Asset Summary Sheet, continued

Petitioner:

Name of petitioner: _____

Address: _____

Date of Birth: _____

Court Information:

Name and other information about Court having current or prior control over the person and/or assets of the respondent/ward:

Name of Court: _____

Address: _____

Case Number: _____

Status of Case: _____

Next hearing date, if any, _____

Attach copies of docket sheet history or summary of case activity.

Is there pending before the above named Court a final or partial settlement and accounting? Yes____ No____ If yes, please provide a copy of such petition and state when the settlement is scheduled to be heard by said Court.

If a final hearing has been held, provide a copy of the final accounting and order from the Court transferring the estate to Alabama. **Please note:** Copies of all court orders must be certified by the issuing court.

Attorneys:

Name and address of attorneys involved or representing the petitioner(s): _____

Name and address of GAL and/or Court Representative appointed for the ward in said Court (current or past):

Guardian ad Litem: _____

Court Representative: _____

Assets/Inventory: As of (date) _____

Please state the value of the assets of the said ward/respondent:

Real property in Alabama \$ _____

Real property located outside of Alabama \$ _____

Personal property in Alabama \$ _____

Personal property located outside of Alabama \$ _____

Liquid assets (cash, bonds, etc.) \$ _____

Attach additional sheets to further explain or list information regarding the above values as necessary, or attach a copy of any existing inventory of ward's assets.

List the name, address and account number for each bank or financial institution, including brokerage accounts and trusts, where assets of the ward/respondent are located and the value or current balance in each:

General Information and Asset Summary Sheet, continued

Trust Assets:

Does the respondent/ward have an interest in any trust assets, either directly, or indirectly, contingent or remainder, etc? Yes _____ No _____. If yes, please provide details of same as follows, including the value, or estimated value, of such asset(s), the name and address of the trustee(s) or institution(s) holding the trust, a copy of the trust document(s) if available, and the name of any court that has conducted hearings on same or has exercised jurisdiction over such trust(s).

Other assets:

Please list any other assets or contingent assets of the ward/respondent, including any pending or anticipated causes of actions or claims which have not been disclosed above:

Signed (date) _____
Affiant

STATE OF _____)
COUNTY OF _____)
_____)

I, the undersigned authority, a Notary Public in and for said County and State, do hereby certify that _____, whose name is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of this document, executed the same voluntarily on the day the

same bears date.

Sworn to and subscribed before me this ____ day of _____, 20 ____.

(Seal) _____
Notary Public
My Commission expires: _____

Guardianship Visitation Rights

- Petition for Visitation

- Power to Limit Visitation

Guardianship Visitation Rights

- **Amends Section 26-2A-108,**

- Establish a procedure by which a relative who has been isolated from an incapacitated family member who is the subject of a guardianship
- May petition the court with jurisdiction over the guardianship for **reasonable visitation rights**.

- EFFECTIVE DATE: January 1, 2017

Power to Limit Visitation

§26-2A-108

- **(b) Except as provided in Division 2A,**
- In addition to the duties, powers, and responsibilities of a guardian described in subsection (a),
- **A guardian of an incapacitated person has the power to limit or enforce the ward's right to visitation or communication with anyone, including the right to receive visitors, telephone calls, and personal mail**

Division 2A. [§26-2A-112-117]

Visitation with Incapacitated Persons.

- **RELATIVE.** A sibling, child, parent, grandparent, or grandchild of a ward or a person who shares this same relationship through adoption or a spouse of the ward.
- **VISITATION ORDER.** An order issued by the court after notice and hearing regarding the visitation with a ward by his or her relative specifying the approval or disapproval of any visitation and the specifics of that visitation including, but not limited to, the time, place, and manner of the visitation.
- **WARD.** An adult who is a ward as defined in Section 26-2A-20.

Temporary Guardian

- Amends Section 26-2A-107
- Increases, from 15 days to **30 days**, the time period in which a **temporary guardian appointed by a probate court** may have authority to act on behalf of an incapacitated person.
- **EFFECTIVE DATE: June 11, 2015.**

Mental Health Treatment for Minors

Mental Health Treatment for Minors

Section 22-8-10

- The parent or guardian of a minor at least 14 years of age and under 19 years of age may **authorize medical treatment for mental health services** even if the minor has expressly refused the treatment
- **provided** the parent and a mental health professional determine that clinical intervention is **necessary and appropriate.**
- **EFFECTIVE DATE: September 1, 2015.**

Mental Health Treatment for Minors

Section 22-8-10

- **Authorization of medical treatment for mental health services of certain minors by parent or legal guardian.**

Access to the mental health records of the minor will follow the **Health Insurance Portability and Accountability Act** of 1996 (HIPAA) Public Law 104-191.

The end

